

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

AK STEEL CORPORATION

Employer

and

Case 9-RC-18072

INTERNATIONAL ASSOCIATION OF MACHINISTS &
AEROSPACE WORKERS, AFL-CIO

Petitioner

and

ARMCO EMPLOYEES INDEPENDENT FEDERATION, INC.

Incumbent Union

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL
AND SERVICE WORKERS INTERNATIONAL UNION,
AFL-CIO-CLC

Intervenor

REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION

I. INTRODUCTION

The Employer, a corporation, is engaged in the manufacture of steel and steel products at its Middletown, Ohio facility, where it employs approximately 2290 full-time and regular part-time production and maintenance employees. The Employer and Armco Employees Independent Federation, Inc., herein called the Incumbent Union, have had a collective-bargaining relationship for many years. The most recent collective-bargaining agreements between the Employer and Incumbent Union was effective from November 1, 1999 through February 28, 2006. There has been no collective-bargaining agreement in existence since February 28, 2006. On February 28, 2006, and continuing to date, the Employer locked out all bargaining unit employees.

The International Association of Machinists and Aerospace Workers, AFL-CIO, herein called the Petitioner, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent the unit employees previously covered under the contract between the Employer and Incumbent Union. The Incumbent Union and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC, herein called the Intervenor International Steelworkers, intervened. A hearing officer of the Board held a hearing and all parties filed briefs with me. It appears from the record and the briefs that the parties have stipulated to the appropriate bargaining unit, and to the employees eligible to vote in the election. The only issue raised at the hearing is the manner in which an election should be conducted, a mail ballot election or a manual election, and the appropriate voting eligibility date.

After carefully considering the evidence presented during the hearing and the arguments made by the parties in their respective briefs, I have decided that it is appropriate to direct an election in the unit sought by the petition and stipulated to by the parties. My reasons for doing so are fully explained below.

II. THE APPROPRIATE BARGAINING UNIT

The parties stipulated that the following employees constitute a unit appropriate for collective bargaining:

All regularly scheduled full and part time production and maintenance employees at the [Employer's] Middletown Works, including all hourly paid clerks, janitors in the plant main offices, fire extinguisher servicemen, and occasional, irregular and substitute foremen, when filling production and maintenance jobs, but excluding plant protection employees, timekeepers, employees in the first aid and medical departments, all employees in the general office, all employees in the main office of each plant except those specifically included in the unit, all salaried employees, co-op student employees, part time employees not regularly scheduled, senior mill clerks, foremen, assistant foremen, and all other supervisors as defined in the National Labor Relations Act.

This is the unit covered by the most recent contract in agreement with the parties' stipulation, I conclude that this is an appropriate unit for collective bargaining and will direct an election among the employees in such unit.

III. VOTING ELIGIBILITY OF LOCKED OUT EMPLOYEES AND EMPLOYEES ON SICK OR DISABILITY LEAVE

In accord with the stipulation of the parties, and based on the record, I find that only those employees who were locked out on March 1, 2006 are eligible to vote in the election. However, in further agreement with the stipulation of the parties, and based on the record as a

whole, I find that those full-time and regular part-time employees who are on sick leave or disability leave are eligible to vote in the election. Finally, in accord with the stipulation of the parties, and based on the entire record, I find that any temporary replacement employees are not eligible to vote in the election.

IV. SUPERVISORY EXCLUSIONS FROM THE UNIT

In accord with the stipulation of the parties, and based on the record evidence, I find that the following individuals are supervisors within the meaning of Section 2(11) of the Act: James L. Wainscott, Chairman, CEO, President; John F. Kaloski, Executive Vice-President of Operations; Larry Zizzo, Vice-President of Human Resources; Tom McKenna, Vice-President of Labor Relations; and Glenn G. Mikaloff, General Manager at Middletown Works. Accordingly, I will exclude them from the Unit.

V. POSITIONS OF THE PARTIES

A. Mail Ballot Election

At the hearing and in their respective briefs, the Employer and the Intervenor Steelworkers assert that I should conduct a mail ballot election for the unit employees. The Petitioner and the Incumbent Union argue that I should conduct a manual election. Each party presented several arguments in support of their respective positions. As a general rule, there is no requirement that parties be permitted to litigate, in a pre-election hearing, the election arrangements, including election or eligibility dates or whether to provide for manual or mail balloting. *Halliburton Services*, 265 NLRB 1154 (1982); *Manchester Knitted Fashions*, 108 NLRB 1366 (1954). However, I have duly considered all of the arguments advanced by the parties and pursuant to the Board's general policy will resolve the issue administratively. The parties will be notified of the election arrangements by letter separate from this Decision and Direction of Election and the letter will contain my rationale for the arrangements that I have chosen. Accordingly, the cases cited in support of its position by the Employer in its brief^{1/} dealing with the appropriateness of a mail ballot election will be considered at a later date.

B. Excelsior List And Eligibility Date

In its brief, the Employer asserts that because there is an ongoing lockout of unit employees, the typical eligibility date for compiling the eligibility list should not be used, i.e. the last payroll date before the issuance of this Decision and Direction of Election. In this connection, the Employer argues that the parties stipulated that only employees locked out on March 1, 2006 are eligible to vote. The Employer then asserts that many of those individuals are no longer employed or have announced their intention to retire by the end of June 2006, and therefore their names should not be included on the eligibility list. As a general rule an employee must be in the appropriate unit on the established eligibility date as well as in employee status on the date of the election, unless absent for reasons specified in the direction of election to be eligible to vote. See, *Plymouth Towing Co.*, 178 NLRB 651 (1969). Thus, if any

^{1/} *Odeberecht Contractors of Florida, Inc.*, 326 NLRB 33 (1988); *North American Plastics Corp.*, 326 NLRB 835; and *GPS Terminal Services, Inc.*, 326 NLRB 839 (1998).

employee is no longer employed in the Unit on the date of the election because they have severed their employment relationship with the Employer by quitting or retiring they would not be eligible to vote in the election regardless of the date used to establish eligibility. *Dakota Fire Protection Inc.*, 337 NLRB 92 (2001), *Plymouth Towing Co.*, supra. Indeed, to establish an eligibility date at the time of the lockout rather than the payroll ending before the issuance of the decision would not remedy the concerns raised by the Employer in its brief. Finally, I decline to rule ineligible to vote any employee, if that is the Employer's position, who assertedly has expressed an intent to retire before the election can be conducted. In any event, if an individual is not employed in the unit on the date of the election he/she would not be eligible to vote.

VI. CONCLUSIONS AND FINDINGS

Based on the foregoing, the entire record and briefs of the parties, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner, Incumbent Union, and Intervenor Steelworkers are labor organizations within the meaning of Section 2(5) of the Act.
4. The labor organizations each claim to represent certain employees of the Employer.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All regularly scheduled full and part time production and maintenance employees at the [Employer's] Middletown Works, including all hourly paid clerks, janitors in the plant main offices, fire extinguisher servicemen, and occasional, irregular and substitute foremen, when filling production and maintenance jobs, but excluding plant protection employees, timekeepers, employees in the first aid and medical departments, all employees in the general office, all employees in the main office of each plant except those specifically included in the unit, all salaried employees, co-op student employees, part time employees not regularly scheduled, senior mill clerks, foremen, assistant foremen, and all other supervisors as defined in the National Labor Relations Act.

VII. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate. The employees will vote whether they wish to be represented for purposes of collective bargaining by International Association of Machinists & Aerospace Workers, AFL-CIO; Armco Employees Independent Federation, Inc.; United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC or no labor organization.^{2/} The date, time, manner and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. VOTING ELIGIBILITY

Eligible to vote in the election are those in the unit who were locked out by the Employer on March 1, 2006, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. EMPLOYER TO SUBMIT LIST OF ELIGIBLE VOTERS

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized

^{2/} The unopposed motions of the Petitioner, Intervenor Steelworkers and Incumbent Union to include their shortened name on the ballot are hereby granted.

(overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **July 7, 2006**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (513) 684-3946. Since the list will be made available to all parties to the election, please furnish **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.


C. NOTICE OF POSTING OBLIGATIONS

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VIII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **July 14, 2006**. The request may **not** be filed by facsimile.

Dated at Cincinnati, Ohio this 30th day of June 2006.


Gary W. Muffley, Regional Director
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

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